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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/887,523	06/21/2001	Joel L. Passke	005127.00094	5745

22907 7590 05/22/2002

BANNER & WITCOFF
1001 G STREET N W
SUITE 1100
WASHINGTON, DC 20001

EXAMINER

STASHICK, ANTHONY D

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 05/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/887,523

Applicant(s)

PASSKE ET AL.

Examiner

Anthony D Stashick

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 June 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4. 6) ☐ Other:

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: reference numbers 110a and 120a as shown in Figure 6. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

2. The disclosure is objected to because of the following informalities: reference number 160a was defined as "pump" on page 17, line 15 then later referred to as "conduit" on page 17, line 17; reference number 200 was defined as "bladder system" on page 12, line 16 then later referred to as "footwear" on page 18, line 8. Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Reed et al. 5,845,417.

Reed et al. '417 discloses all the limitations of the claims including the following: an upper (see Figure 5); a sole structure 204 attached to the upper (see Figure 5); an air-filled bladder 210 in fluid communication with ambient air (surrounding air within the shoe) and attached to the article of footwear (attached to the sole); a filter 214 in fluid communication with the bladder and ambient air

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(see col. 8, lines 32-53 and 63-66 and col. 9, line 66 through col. 10, line 22); the filter being structured to permit ambient air to enter the bladder and restrict liquids and particulates from entering the bladder (normal operation of a filter).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the French reference to Colesnicenco 2,670,369 (Colesnicenco '369) in view of Ohashi 4, 507, 880. Colesnicenco '369 discloses a sole structure; an air-filled bladder in fluid communication with ambient air and attached to the article of footwear; a filter in fluid communication with the bladder and ambient air; the filter being structured to permit ambient air to enter the bladder and restrict liquids and particulates from entering the bladder. Colesnicenco '369 does not teach an upper attached to the sole, the material making up the filter, or a layer overlying the filter. Ohashi '880 teaches that a layer(s) of PTFE (see col. 5, lines 35-52) can be used in a ventilated shoe to aid in preventing debris from entering the shoe while allowing the shoe to breathe. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made to make the filter (usually used to allow air to enter but keep particles out) of Colesnicenco '369 out of PTFE, as taught by Ohashi '880, to allow for air to pass without allowing particles or fluid to pass through and contaminate the bladder or valve. It also would have been obvious to place another layer of perforated material, such as a perforated insole, to allow for the shoe to breathe yet prevent large particle from being sucked in through the air intake of the shoe.

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It also would have been within the skill of one of ordinary skill in the art to make the filter out of material that would be repellant to any fluids the shoe might encounter so as not to contaminate the intake air and allow contaminated air to be placed within the bladder.

7. Claims 2-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reed et al. 5,845,417 in view of Ohashi 4, 507, 880. Reed et al. '417 discloses all the limitations of the claims except the material making up the filter, or a layer overlying the filter. Ohashi '880 teaches that a layer(s) of PTFE (see col. 5, lines 35-52) can be used in a ventilated shoe to aid in preventing debris from entering the while allowing the shoe to breathe. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made to make the filter (usually used to allow air to enter but keep particles out) of Reed et al. '417 out of PTFE, as taught by Ohashi '880, to allow for air to pass without allowing particles or fluid to pass through and contaminate the bladder or valve. It also would have been obvious to place another layer of perforated material, such as a perforated insole, to allow for the shoe to breathe yet prevent large particle from be sucked in through the air intake of the shoe. It also would have been within the skill of one of ordinary skill in the art to make the filter out of material that would be repellant to any fluids the shoe might encounter so as not to contaminate the intake air and allow contaminated air to be placed within the bladder.

8. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over any one of the references as applied to claim 14 above in view of Goss 5,826,349. The references as applied to claim 14 above disclose all the limitations of the claim except for the filter being located in the upper. Goss '349 teaches that a filter 30 that is connected to a bladder can be located in the upper of the shoe (see Figures 1-3) to aid in preventing fluids from entering the bladder system. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to place the intake filter of the references as applied to claim 14 above, in the upper of the shoe to decrease the opportunity for fluids to enter the bladder system, as taught by Goss '349.

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Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and are cited on form 892 enclosed herewith.

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 306-5648, email CustomerService3700@uspto.gov.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony D Stashick whose telephone number is 703-308-3876. The examiner can normally be reached on Tuesday through Friday from 8:30 am until 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

Other helpful telephone numbers are listed for applicant's benefit.

Allowed Files & Publication	(703) 305-8322
Assignment Branch	(703) 308-9287
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/8335
Fee Increase Questions	(703) 305-5125
Intellectual Property Questions	(703) 305-8217
Petitions/Special Programs	(703) 305-9282
Terminal Disclaimers	(703) 305-8408

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Informal Fax for 3728

(703) 308-7769

If the information desired is not provided above, or has been changed, please do not call the examiner (this is the latest information provided to him) but the general information help line below.

Information Help line
Internet PTO-Home Page

1-800-786-9199
<http://www.uspto.gov/>



Anthony D Stashick
Primary Examiner
Art Unit 3728

ADS
May 16, 2002